

**IN THE COURT OF COMMON PLEAS**

**FOR THE STATE OF DELAWARE**

**ORDER AMENDING RULE 43  
OF THE COURT OF COMMON PLEAS  
RULES OF CRIMINAL PROCEDURE**

This 23rd day of November 2004, IT IS ORDERED that:

- 1) Court of Common Pleas Criminal Rule 43 is amended by including the material underlined as follows:

Court of Common Pleas Criminal Rule 43:

Rule 43. Presence of defendant.

- (a) *Presence required.* The defendant shall be present at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.
- (b) *Continued presence not required.* The further progress of the trial to and including the return of the verdict shall not be prevented and the defendant shall be considered to have waived the right to be present whenever a defendant, initially present,
  - (1) Is voluntarily absent after the trial has commenced (whether or not the defendant has been informed by the Court of the obligation to remain during the trial), or
  - (2) After being warned by the Court that disruptive conduct will cause the removal of the defendant from the courtroom, persists in conduct which is such as to justify exclusion from the courtroom.
- (c) *Presence not required.* A defendant need not be present in the following situations:
  - (1) A corporation may appear by counsel for all purposes.
  - (2) In prosecution for offenses punishable by fine or imprisonment for not more than 6 months, or both, the Court, with the written consent of the defendant, may in its discretion permit arraignment, plea, and imposition of sentence in defendant's absence.
  - (3) At an arraignment by written pleading under Rule 10(c).
  - (4) At a conference or argument upon a question of law.
  - (5) At a reduction of sentence under Rule 35.
  - (6) If the Defendant is in custody and charged with a Title 21 offense, other traffic offense, a Class B or unclassified misdemeanor, or a violation with the

consent and waiver of the Defendant's appearance, the Court may permit arraignment and/or plea by video phone and impose sentence.

(2) This amendment shall be effective immediately.

The above Court of Common Pleas Criminal Procedure Rule 43 is accepted as amended above by the following Judiciary:

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Chief Judge Alex J. Smalls

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Judge Merrill C. Trader

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Judge William C. Bradley

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Judge Jay Paul James

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Judge John K. Welch

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Judge Rosemary B. Beauregard

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Judge Kenneth S. Clark, Jr.

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Judge Charles W. Welch, III

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Judge Joseph F. Flickinger

Dated: November 23, 2004